

Nos. PD-0724-20 & PD-0725-20

In the Court of Criminal Appeals at Austin

FILED
COURT OF CRIMINAL APPEALS
8/26/2020
DEANA WILLIAMSON, CLERK

No. 01-20-00004-CR & No. 01-20-00005-CR
In the Court of Appeals for the
First District of Texas at Houston

Ex parte

JOSEPH ERIC GOMEZ,
Appellant / Respondent

On Appeal from Trial Court Case No. 1657519 and 1657521
Before the 338th Judicial District Court of Harris County, Texas

**APPELLANT / RESPONDENT'S MOTION TO MAINTAIN
STATUS QUO AND PERMIT HIM TO REMAIN FREE ON BOND
PENDING COURT'S REVIEW**

TO THE HONORABLE COURT OF CRIMINAL APPEALS:

JOSEPH ERIC GOMEZ, Appellant before the Court of Appeals for
the First District of Texas at Houston on a pretrial application for writ
of habeas corpus filed in the trial court and Respondent before this
Court where the State has petitioned for discretionary review, by and

through undersigned counsel, and moves this Court to maintain the status quo, permitting Appellant/Respondent to remain free on bond pending this Court's review of the State's petition.

Procedural History

1. Appellant/Respondent filed applications for writ of habeas corpus in the trial court after the trial revoked the bonds posted by Appellant/Respondent in the total amount of \$40,000 (amounts set by the magistrate at a hearing held pursuant to Article 15.17, Texas Code of Criminal Procedure; a magistrate's order for emergency protection and no contact order was also entered prohibiting contact with the complaining witness) without cause and raised the bond amounts to a total of \$150,000. The trial court denied the applications and Appellant/Respondent appealed the judgments to this Court.
2. On August 7, 2020, the Court of Appeals for the First District of Texas at Houston issued its decision in the appeal, finding that the trial court abused its discretion, reversed the judgment denying the writ applications, ordered that the original \$40,000 bonds be reinstated, and ordered the mandate to take effect immediate-

ly. The Harris County District Clerk, following the instructions of the mandate, reinstated Appellant/Respondent's bonds and he was released from custody the following day.

3. The State filed several motions, both in this Court and before the Court of Appeals, attempting to stay the mandate. This Court of Appeals denied the State's Motion to Stay Mandate Pursuant to Rule 31.4 and dismissed all other motions. This Court likewise rejected the State's previously filed motion without prejudice.
4. Following the procedure set out in Rule 31.4(c) of the Texas Rules of Appellate Procedure, the State subsequently presented its motion to stay mandate and appendix (petition for discretionary review) to this Court.
5. Yesterday, this Court issued its *per curiam* order granting the State's motion and ordering the Court of Appeals to recall the mandates issued in these cases.

The Status Quo Should Remain and Appellant/Respondent Should Remain Free on Bond

6. It is axiomatic that bail is not to be used as an instrument of oppression. The State presumably wants to do exactly that and oppress Appellant/Respondent who has been released from custody

for 23 days now, bound by \$40,000 in surety bonds before the trial court, and subject to conditions of those bonds including not to have any contact with the complaining witness (a condition that Appellant/Respondent has complied with since it was first ordered back in November 2019).

7. In the 23 days that have passed since his release, Appellant/Respondent has not done anything to show he is a flight risk or danger to the community. He has remained at his home, seeking employment, and working with his lawyers to prepare a defense in his case, while complying with all other conditions of his bonds.

8. Article 44.35, Texas Code of Criminal Procedure states,

In any habeas corpus proceeding in any court or before any judge in this State where the defendant is remanded to the custody of an officer and an appeal is taken to an appellate court, the defendant shall be allowed bail by the court or judge so remanding the defendant, except in capital cases where the proof is evident. The fact that such defendant is released on bail shall not be grounds for a dismissal of the appeal except in capital cases where the proof is evident.”

TEX. CODE CRIM. PROC. art. 44.35 (West 2020).

9. Because Appellant/Respondent has given \$40,000 in bail bonds to ensure his appearance before the trial court, there should be no change in the status quo while this Court reviews the State's petition for discretionary review.

WHEREFORE, PREMISES CONSIDERED, Appellant/Respondent respectfully requests this Court to maintain the status quo, permitting Respondent/Appellant to remain free on bond pending this Court's review of the State's petition.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing instrument has been served on to the attorney for the State, Clint Morgan, Harris County District Attorney's Office, pursuant to Texas Rule of Appellate Procedure 9.5 (b)(1), through Appellant's counsel's electronic filing manager on August 25, 2020.

/s/ T. Brent Mayr
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